

NOV 26 1923

WM. R. STANSBURY

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 369.

PANAMA RAILROAD COMPANY,

Plaintiff-in-error,

against

ANDREW JOHNSON,

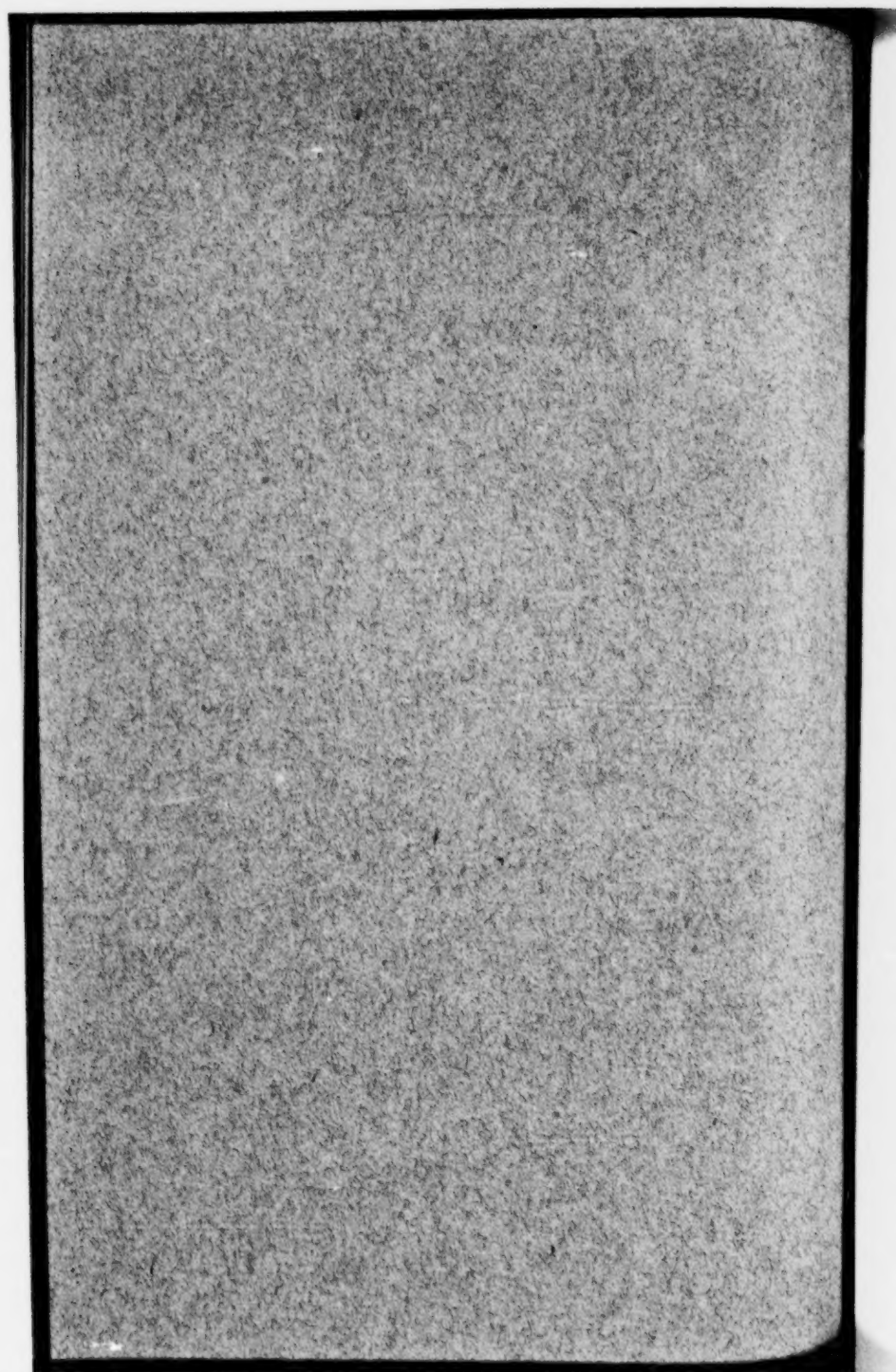
Defendant-in-error.

Motion for Leave to Intervene as *Amici Curiae* Made by
John M. Woolsey and Vernon S. Jones, Who Are of
Counsel in the Other Cases Shown Within Now
Pending in Federal and State Courts Which Involve
the Same Question as This Case.

JOHN M. WOOLSEY,

VERNON S. JONES,

27 William Street,
New York City.



SUPREME COURT OF THE UNITED STATES

PANAMA RAILROAD COMPANY,
Plaintiff-in-error,
against

ANDREW JOHNSON,
Defendant-in-error.

October Term, 1923.

No. 369.

Motion for Leave to
Intervene as
Amici Curiae.

NOW COME John M. Woolsey and Vernon S. Jones, counsel for United States Steel Products Company, defendant in the case of *Roy E. Spencer vs. United States Steel Products Company*, now at issue in the District Court of the United States for the Southern District of New York; for Ore Steamship Corporation, defendant in the case of *Max Margolis vs. Ore Steamship Corporation*, now at issue in the Supreme Court of the State of New York for the County of Richmond; for Atlantic Transport Company of West Virginia in the case of *Manuel Palacio vs. Atlantic Transport Company*, now at issue in the Supreme Court of the State of New York for Kings County; for Chile Steamship Company, Inc., in the case of *Manuel Tages as administrator &c. of Ramon Tages Sestayo vs. Chile Steamship Company, Inc.*, now at issue in the Supreme Court of the State of New York, for the County of

Kings; and in the case of *Matter of the Petition of the Union Sulphur Company for Limitation of its Liability as owner of the steamship Hewitt*, now pending in the Circuit Court of Appeals for the Second Circuit and involving about twenty death claims which have been stayed by the petition for limitation of liability; and

PRAY LEAVE of Court to intervene in the above entitled cause as *amici curiae* and as such *amici curiae* upon the hearing of the above entitled cause to submit a brief in support of the Panama Railroad Company, plaintiff-in-error.

Dated, New York, November 21, 1923.

JOHN M. WOOLSEY,
VERNON S. JONES,
No. 27 William Street,
New York City.

SUPREME COURT OF THE UNITED STATES.

PANAMA RAILROAD COMPANY,
Plaintiff-in-error,

against

ANDREW JOHNSON,
Defendant-in-error.

Petition in Support
 of Motion.

NOW COME John M. Woolsey and Vernon S. Jones, counsel for the defendants in the actions hereinafter mentioned, petitioning for leave to intervene as *amici curiae*, represent to this Honorable Court that:

I.

1. On or about the 17th day of October, 1922, Roy E. Spencer served a complaint against the United States Steel Products Co. in an action brought in the District Court of the United States for the Southern District of New York.

The complaint in this action set forth three alleged causes of action, in the first of which the plaintiff alleged that he had suffered personal injuries while employed as a fireman on the steamship *Birmingham City*, owned

by defendant, and "*that said injuries were caused by reason of the negligence of the defendant, the officers and seamen in command of said vessel.*"

2. On or about July 27th, 1922, Max Margolis served a summons and complaint against Ore Steamship Corporation in an action begun in the Supreme Court of the State of New York for the County of Richmond.

The complaint in this action set forth that plaintiff suffered personal injuries while employed as a seaman on the Steamship *Feltore*, owned by the defendant, and "*that said injuries were caused by reason of the negligence of the defendant, of the officers and seamen in command of said vessel and of other employees on board the vessel.*"

3. On or about May 22, 1923, Manuel Palacio served a summons and complaint on the Atlantic Transport Co. of West Virginia in an action begun in the Supreme Court of the State of New York, for Kings County.

The complaint in this action set forth that plaintiff received personal injuries while employed as a fireman on the Steamship *Manchuria*, owned by defendant, and "*that said personal injuries were further caused by the negligence of the defendant and seamen in its service on board said vessel*"; and further, "*that by virtue of section 33 of the Merchant Seaman's Act of June 5, 1920, amending section 20 of the Seaman's Act of March 4, 1915, whereby all statutes heretofore enacted in favor of railroad employees engaged in foreign or interstate commerce and particularly sections 8657 and following*

of the United States Compiled Statutes were made applicable to seamen employed on American vessels the plaintiff is entitled to recover damages for the negligence of the defendant and of his co-employees in its service."

4. On or about October 3, 1922, Manuel Tages, as administrator of the goods, chattels and credits which were of Ramon Tages Sestayo, deceased, served a summons and complaint against Chile Steamship Company, Inc., in an action brought in the Supreme Court of the State of New York for the County of Kings.

The complaint in this action set forth that the plaintiff's intestate had suffered death by reason of personal injuries which he received while a seaman on the steamship *Republic*, owned by defendant, and that these personal injuries were caused by "*the negligence of the said defendant, its servants, agents and employees*"; and further that by "*virtue of Section 33 of the Merchant Seaman's Act of June 5, 1920, amending Section 20 of the Seaman's Act of March 4, 1915, whereby all statutes heretofore enacted in favor of railroad employees engaged in foreign or interstate commerce, and particularly Sections 8657 and following of the United States Compiled Statutes, were made applicable to seamen employed upon American vessels, the plaintiff is entitled to recover damages for the negligence of the defendant and of the plaintiff's intestate's co-employees in the defendant's service.*"

5. In addition to the cases above mentioned of separate litigations, petitioners are of counsel for the Union Sulphur Company in the *Matter of the Petition of the*

Union Sulphur Company, as owner of the steamship HEWITT, for Limitation of its Liability, now pending in the Circuit Court of Appeals for the Second Circuit, under which petition about twenty death claims have been filed, and suits outside the petition have been stayed pending the decision of this Court in the case of *In the Matter of the East River Towing Company, Inc.*, No. 359, on the present Docket of the Court, in which questions involving the scope of Section 33 of the Merchant Marine Act 1920 as affecting limitation proceedings have been certified to this Court by the Circuit Court of Appeals for the Second Circuit.

6. Defendant has served its answer in each of these cases. They are now at issue and are awaiting trial.

In all the above cases the defendants were the employers of the plaintiffs.

II.

1. The questions of law involved in these cases are exactly the same as those involved in the case of *Panama Railroad Co. vs. Johnson*, No. 369 on the present Docket of this Court.

2. The questions of law involved in said case are of great importance to shipping interests by reason of the fact that Section 33 of the Merchant Marine Act, 1920, purports to change radically, what has for a long time been the law, with regard to the liability of shipowners for personal injuries to seamen employees.

3. Your petitioners, who are members of the bar of this Honorable Court, habitually represent many ship-owners to whom a decision in favor of the contentions of the Panama Railroad Company on the questions involved in the instant case is of the greatest importance.

WHEREFORE your petitioners respectfully request leave of Court to intervene as *amici curiae* and to submit a brief in support of the contention of the Panama Railroad Company, plaintiff-in-error, that the judgment below was erroneous because Section 33 of the Merchant Marine Act, 1920, is unconstitutional.

Respectfully submitted,

JOHN M. WOOLSEY,

VERNON S. JONES,

27 William Street,

New York City.